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COMMISSION ON NARCOTIC DRUGS ACTING AS
PREPARATORY BODY FOR THE SPECIAL SESSION
OF THE GENERAL ASSEMBLY DEVOTED TO THE
FIGHT AGAINST THE ILLICIT PRODUCTION,
SALE, DEMAND, TRAFFIC AND DISTRIBUTION
OF NARCOTIC DRUGS AND PSYCHOTROPIC
SUBSTANCES AND RELATED ACTIVITIES
Second session
Vienna, 16-20 March 1998
Item 2 (b) of the provisional agenda*

PREPARATIONS FOR THE SPECIAL SESSION OF THE GENERAL ASSEMBLY TO CONSIDER THE FIGHT AGAINST THE ILLICIT PRODUCTION, SALE, DEMAND, TRAFFIC AND DISTRIBUTION OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES AND RELATED ACTIVITIES AND TO PROPOSE NEW STRATEGIES, METHODS, PRACTICAL ACTIVITIES AND SPECIFIC MEASURES TO STRENGTHEN INTERNATIONAL COOPERATION IN ADDRESSING THE PROBLEM OF DRUG ABUSE AND ILLICIT TRAFFICKING

CONSIDERATION OF THE REPORTS OF THE INFORMAL INTER-SESSIONAL MEETINGS OF THE COMMISSION ACTING AS PREPARATORY BODY FOR THE SPECIAL SESSION OF THE GENERAL ASSEMBLY ON INTERNATIONAL DRUG CONTROL

Control of precursors

Addendum

*E/CN.7/1998/PC/1.

V.98-50952 (E)

Comments and proposed amendments received from Governments and the European Commission

1. The first informal open-ended inter-sessional meeting of the Commission on Narcotic Drugs, which was held from 7 to 9 July 1997, examined the topics of precursors and amphetamine-type stimulants. The consensus reached at the meeting was reflected in two working papers which were transmitted to all Governments under cover of a note verbale dated 19 August 1997. Governments were invited to make comments on elements not already included in the two working papers and to address those comments to the Secretariat before 25 September 1997.

2. The working paper on precursors (E/CN.7/1998/PC/3) will be before the Commission acting as preparatory body for the special session of the General Assembly to be held in June 1998.

3. Comments and proposed amendments received from Governments and the European Commission in response to the above-mentioned note verbale are contained in the present document.

General comments

4. *Germany* and the *United States of America* have commented that the working paper, and others prepared during the preparatory process, will need to be redrafted into a common format.

5. *Germany* has commented that the text should place a greater emphasis on the role of the International Narcotics Control Board in the activities proposed in the working paper. The Secretariat proposes that the seventh preambular paragraph of the proposed draft resolution should be amended to read:

> "Conscious of the progress made in controlling shipments of precursors as a result of cooperation between the competent national authorities in a number of States and of the important work conducted by the International Narcotics Control Board in facilitating that cooperation, and in assisting Governments to verify the legitimacy of individual transactions to prevent their diversion to illicit traffic".

6. *Japan* has noted that effective measures for precursor control cannot be achieved by States alone. Cooperation with international organizations, regional bodies and the private sector is indispensable. It is proposed that in all paragraphs concerning action (i.e. paras. 4, 7, 9, 12 and 14), the words "States should" should be replaced by the words "States, in cooperation with competent international and regional bodies and, if necessary, with the private sector in each State, should".

Paragraph 7 (a) (i)

7. The *European Commission* has noted that in paragraph 7 (a) (i) it is proposed to extend pre-export notification to transactions involving all the substances listed in Table I and Table II of the 1988 Convention, a proposal that does not correspond to current legislation and practice of the European Commission. According to its regulations, States members of the European Union must provide pre-export notification whenever Table I substances are exported to Parties that have requested the Secretary-General to be notified in advance of those exports. Pre-export notification may also be provided where some Table II substances are exported to sensitive destinations. The practice allows for the export of some precursors to certain destinations covered only by open authorization; the export of seven Table II substances (i.e. acetone, ethyl ether, hydrochloric acid, methyl ethyl ketone, potassium permanganate, sulphuric acid and toluene) to non-sensitive destinations requires no export authorization. In either case, the European Commission has noted that the provision of pre-export notification would not be possible, or would imply a supplementary and burdensome administrative workload. *Germany*

and the *United Kingdom of Great Britain and Northern Ireland*, as States members of the European Union, and *Canada* have made similar comments.

8. Similarly, *Japan* has noted that the 1988 Convention does not require States to provide pre-export notification for transactions involving Table II substances. *Japan* has also noted that it would not be practical to provide pre-export notification for Table II substances, since the volume of trade in those substances is high and the majority of transactions are legitimate.

9. To clarify, the *European Commission* has proposed that the words "for all transactions involving the substances listed in Tables I and II of the 1988 Convention" should be replaced with the words "for all transactions involving the substances listed in Table I and, to the extent possible, in Table II of the 1988 Convention". *Germany* and *United Kingdom* have proposed a similar amendment. *Japan* has proposed an amended text that limits the requirement further, to Table I substances only, as follows:

> "for all transactions involving the substances listed in Table I of the 1988 Convention".

10. The Secretariat notes that the working paper makes no distinction between those measures that should be applied to Table I substances, Table II substances or both. Bearing in mind the language used in Economic and Social Council resolution 1997/41, section III, paragraph 1, in which Governments were requested, *inter alia*, to "make every effort to verify the legitimacy of individual transactions involving precursors of amphetamine-type stimulants listed in Table I and, where possible, those listed in Table II of the 1988 Convention", and the arrangements made by the competent national authorities and international bodies participating in the Meeting on Information Exchange Systems for Precursor Control, convened by the International Narcotics Control Board from 30 June to 4 July 1997, the Secretariat proposes that paragraph 7 (a) (i) should be amended to read:

> "Regular exchange of information between exporting, importing and transit States, and with the International Narcotics Control Board, on exports of precursors before they take place, including, in particular, the provision by exporting States of some form of pre-export notification to the competent authorities in importing countries for all transactions involving the substances listed in Table I, and for acetic anhydride and potassium permanganate in Table II, of the 1988 Convention. To the extent possible, every effort should be made to do likewise for all other substances listed in Table II".

Paragraph 7 (a) (ii)

11. The *United States* has proposed that paragraph 7 (a) (ii) should be amended to include reference to the need not only for timely feedback in verifying the legitimacy of transactions, but also for adequate time for importing States to verify the legitimacy of a transaction. The Secretariat therefore proposes the following amended text:

> "Promotion of the implementation, by competent national authorities, of mechanisms to verify the legitimacy of commercial transactions before they take place, including timely feedback to exporting States by States that have received pre-export notifications, and provision for exporting States to hold shipments for up to 15 days to allow importing States adequate time to verify their legitimate end-use".

Paragraph 7 (a) (iii)

12. *Germany* has stated that the requirements of commercial confidentiality and national data protection rules prevent that country from making available the information required under paragraph 7 (a) (iii). Consequently, *Germany* has proposed that the paragraph be deleted.

13. The *European Commission* and the *United Kingdom*, as a State member of the European Union, have commented that the requirement to exchange information on the licit uses made of imported precursors could be covered by paragraph 7 (a) (ii) without further addition, and have also suggested that the paragraph should therefore be deleted.

Paragraph 7 (b)

14. The *European Commission* has indicated the need for safeguards so that data protection legislation is applied in connection with the disclosure to third parties of sensitive information on precursors. Accordingly, it has proposed that paragraph 7 (b) should be amended by adding the following sentence at the end of the paragraph:

> "Moreover, an appropriate legal framework should be set up, where necessary, to ensure the suitable protection of personal data".

15. The Secretariat notes that the provisions of article 12, paragraph 9 (c), of the 1988 Convention oblige Governments to "(n)otify, as soon as possible, the competent authorities and services of the Parties concerned if there is reason to believe that the import, export or transit of a substance in Table I or Table II is destined for the illicit manufacture of narcotic drugs or psychotropic substances". Any amendment of the current text should not undermine that obligation.

Paragraph 7 (c)

16. The *European Commission* has noted that the present wording of paragraph 7 (c), particularly the last sentence, may create difficulties or misunderstandings. It has suggested that the last sentence should be amended to read:

> "Whenever an importing, exporting or transit State is considering issuing a permit for shipment, it will make its decision with due assessment of all the elements of the case, and in particular of any such information provided to it by the State that has denied the issue of a permit for that shipment".

Paragraph 8

17. The *European Commission* has expressed concern about the last sentence of paragraph 8, suggesting that the assessment is questionable. It has proposed that the sentence should be deleted.

18. However, the Secretariat notes that the International Narcotics Control Board has regularly reported that the inability to collect and report data on the licit movement of controlled substances, whether they be narcotic drugs, psychotropic substances or precursors, is often an indication that adequate systems of control are not in place.[1] More specifically, the Board has reported on many occasions that information on licit trade in, uses of and requirements for precursors is indispensable for preventing their diversion. Without such information, the Board has found it difficult to see how competent national authorities could possibly monitor the movement of substances in Table I and Table II, as required under article 12. Furthermore, the Board has insisted that without such data it would be difficult quickly to check the legitimacy of individual shipments.

Paragraph 9 (a)

19. *Mexico* has proposed the deletion in paragraph 9 (a) of the words "in conformity with requirements for confidentiality and data protection".

20. The Secretariat notes, as already indicated in paragraph 12 above (comments on para. 7 (a) (iii)), that the national legislation of some Governments regarding commercial confidentiality and data protection prevents those Governments from making available some of the information required under paragraph 9 (a). Governments may therefore wish to consider keeping in the final text some recognition of that limitation.

Paragraph 12 (b)

21. *Mexico* has proposed the deletion of the last sentence of paragraph 12 (b), concerning the informal or formal nature of arrangements. The paragraph would therefore end with the words "on individual transactions".

Paragraph 12 (e)

22. The *European Commission* has proposed amending the current text of paragraph 12 (e) to read:

> "Promote the exchange of experience relating to police, customs and other administrative investigation, interception, detection and control of diversion of precursors".

Paragraph 12 (f)

23. The *European Commission*, *Germany* and the *United Kingdom* have indicated that paragraph 12 (f) appears to be redundant, since the measures required under paragraphs 12 (c), (d) and (e) already ensure the raising of awareness and the promotion of professional skills. They have proposed that the paragraph should be deleted.

Paragraph 14 (b)

24. *Mexico* has proposed the deletion in paragraph 14 (b) of the words "either mandatorily or voluntarily".

25. *Germany* has commented that the monitoring measures required by paragraph 14 (b) should be limited to those substances in the limited international special surveillance list that notoriously cause problems in a given country or region, because they are frequently used for the illicit manufacture of narcotic drugs or psychotropic substances. The *United Kingdom* has made a similar comment, and the *European Commission* has also noted that, while the special surveillance list is to be an international list, it is for use at the national and regional levels.

26. The *European Commission*, on behalf of Germany, the United Kingdom and other States members of the European Union, has therefore proposed that the first sentence of paragraph 14 (b) should be amended to read:

> "Apply monitoring measures, either mandatorily or voluntarily in cooperation with the chemical industry, so as to prevent the diversion from licit channels to the illicit traffic of those substances included on the special surveillance list that are relevant at the national or regional levels."

27. The Secretariat notes that the International Narcotics Control Board has still to establish the limited international special surveillance list, determine the specific functions of that list and decide on what actions Governments should take with regard to the list. The Board will convene its Advisory Expert Group in June to assist it in that work. Governments may therefore wish to consider leaving the current text unchanged, but requesting that the specific concerns of the European Commission, Germany and the United Kingdom be given special attention by the Board before it makes its final decision with regard to the list.

28. *Mexico* has proposed that in the last sentence of paragraph 14 (b), the words "sanctions may be considered" should be replaced by the words "sanctions should be considered".

29. Finally, and again in connection with the last sentence of paragraph 14 (b), *Germany* has proposed that the text should oblige States to introduce penal sanctions against the diversion of listed non-scheduled substances with the knowledge that they will be used in the illicit manufacture of narcotic drugs or psychotropic substances. It has proposed that the last sentence should be amended to read:

> "In addition, States should establish the diversion of non-scheduled chemical substances with the knowledge that they are intended for use in the illicit manufacture of drugs as a criminal offence according to their domestic legal system within the meaning of article 3 of the 1988 Convention."

Notes

[1]*Effectiveness of the International Drug Control Treaties: Supplement to the Report of the International Narcotics Control Board* (United Nations publication, Sales No. E.95.XI. 5), para.110 (c).